

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

LAURA CALVIN,

Plaintiff,

vs.

CIV. NO. 05-283 WDS/ACT

STATE OF NEW MEXICO; the BOARD
OF REGENTS OF THE UNIVERSITY OF
NEW MEXICO, as Trustee of the UNIVERSITY
OF NEW MEXICO HOSPITAL; DR. GULSHAN
PARASHER, M.D.; and DR. ANTHONY MADRID,
M.D.,

Defendants.

PROPOSED FINDINGS AND RECOMMENDATIONS

THIS MATTER having come before the Court on the referral of United States Magistrate Judge W. Daniel Schneider, presiding judge in this matter, for a decision regarding Plaintiff's Statement of Fees and Costs Incurred pursuant to the Court's Order Granting Emergency Motion to Withdraw as Counsel of Record and to Vacate Trial (Docket No. 67). The undersigned has reviewed Plaintiff's Statement of Fees and Costs Incurred in preparing for the vacated May 23, 2006 trial setting, the attached affidavits of Scott E. Borg and Paul D. Barber, Defendants' Response to Plaintiff's Statement of Fees and Costs and Plaintiff's Reply, and determines that Plaintiff's request for fees and costs should be granted in part. As requested by the Defendants in their Response, the Court also conducted an *in camera* review of billing records from counsel for Plaintiff in an effort to determine the amount of time that was reasonably spent on tasks related to trial preparation and which will have to be repeated as a result of Defendants' request that the

May 23, 2006 trial be vacated.

When awarding attorneys' fees, the Court must first determine the number of hours reasonably spent by counsel regarding the tasks at question. Case v. Unified School District No. 233, 157 F. 3d 1243, 1250 (10th Cir. 1998). The party requesting the fees has the burden of proving the hours expended were reasonably necessary for that task, usually by submitting meticulous, contemporaneous time records showing how the hours expended related to the specific task. In this instance the Court was provided with specific itemization of the tasks undertaken by each of the lawyers.¹ In addition, the Court considered the exhibit attached to Defendants' Response in determining a reasonable hourly rate. Based on The Economics of Law Practice in New Mexico Lawyer Compensation and the Court's own knowledge of fees in the Albuquerque legal market, the Court finds that a reasonable hourly rate for Plaintiff's counsel in this medical malpractice case would be \$225 per hour.

Based on a review of the documentation and the legal analysis as discussed above, the undersigned recommends that the Plaintiff be awarded the following attorneys fees and costs:

Attorneys' Fees

Scott E. Borg	63.8 hrs. x \$225 per hr. =	\$14,355.00
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Paul D. Barber	13.2 hrs. x \$225 per hr. =	<u>\$ 2,970.00</u>
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\$17,325.00

Gross Receipts Tax For Attorneys' Fees
(0.067%)

\$ 1,169.44

¹The Court was not provided with specific itemization of the tasks undertaken by the Plaintiff's expert witness, but assumes the tasks involved a review of medical records, medical literature and deposition testimony, all of which will have to be repeated in preparation for trial at a later date.

Expert Medical Witness Fees

Dr. Khaldoun Debian	6 hrs. 35 min. at \$400 per hr. =	\$ 2,533.00
Dr. Bryer-Ash	4 hrs. at \$595 per hr. =	\$ 2,380.00
Dr. Gerald Fredman		<u>\$ 1,300.00</u>
TOTAL:		\$24,707.44

IT IS THEREFORE RECOMMENDED that Plaintiff be awarded attorneys' fees and costs incurred in preparing for the vacated May 23, 2006 trial setting in the total amount of **\$24,707.44.**

Timely objections to the foregoing may be made pursuant to 28 U.S.C. § 636(b)(1)(C). Within ten days after a party is served with a copy of these Proposed Findings and Recommendations, that party may, pursuant to § 636(b)(1)(C), file written objections to such Proposed Findings and Recommendations with the Clerk of the United States District Court, 333 Lomas Blvd. NW, Albuquerque, New Mexico 87102. A party must file any objections within the ten day period allowed if that party wants to have appellate review of the Proposed Findings and Recommendations. If no objections are filed, no appellate review will be allowed.


ALAN C. TORGERSON
United States Magistrate Judge